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Supreme Court of the United States

CITY OF COLUMBUS, MITCHELL BROWN,
And BOBBIE BEAVERS,

Petitioners,

v.

OURS GARAGE AND WRECKER SERVICE, INC. AND
THE TOWING AND RECOVERY ASSOCIATION OF OHIO,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF AMICI CURIAE VRC LLC, AUSTIN TOWING ASSOCIATION AND HOUSTON PROFESSIONAL TOWERS ASSOCIATION IN SUPPORT OF RESPONDENTS

JONATHAN BRUCE
LIVINGSTON & ASSOCIATES, P.C.
6464 Savoy, Suite 100
Houston, Texas 77036
(713) 667-2234

JAMES C. MOSSER
Counsel of Record
BYRON K. HENRY
JAMES C. MOSSER, INC.
17110 Dallas Parkway, Suite 290
Dallas, Texas 75248
(972) 733-3223

Attorneys for Amici Curiae in Support of Respondents

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INTEREST OF AMICI CURIAE VRC LLC, AUSTIN TOWING ASSOCIATION, AND HOUSTON PROFESSIONAL TOWERS ASSOCIATION*

Amicus VRC LLC ("VRC") is a limited liability company engaged in the business of towing and storage of motor vehicles for compensation in and around the Dallas/Fort Worth, Texas metropolitan area. VRC maintains offices, including tow trucks, in Dallas, Arlington, and Plano, Texas. VRC offers towing services to primarily private property owners who wish to remove *unauthorized or illegally parked vehicles, as well as trespassers*, from their property. VRC also provides towing services from the scene of motor vehicle accidents at the request of law enforcement and motor vehicle owners and operators. In addition, VRC is available to perform tows of disabled motor vehicles at the request of the owner or operator of the vehicle.

Amici Austin Towing Association ("ATA") and the Houston Professional Towers Association ("HPTA") are incorporated associations comprised of numerous towing companies and personnel providing towing services in and around Austin and Houston, Texas. Most of amici's members primarily provide towing services from accident scenes to cities and counties.

At present amici and their operations are regulated by the State of Texas Department of Transportation ("TXDOT") through Chapters 683, 684, and 685. Amici are also regulated by many cities in which they operate tow trucks. Each municipality has its own guidelines, in addition to TXDOT, regarding vehicle equipment, permits, vehicle inspections, driver qualifications, application fees, and regulations requiring that towing companies maintain or contract with a storage facility within its city limits.

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* Counsel for Amici indicated on the cover of this Brief authored this Brief in whole. No other person or entity other than Amici made a monetary contribution to the preparation or submission of this Brief.

Because Congress has expressly allowed States and political subdivisions to set the maximum price for tows performed without the prior consent of the owner or operator (which make up the vast majority of tows performed by amici), it is vital that the remainder of Congress' legislation to deregulate motor carriers and foster a free market in towing services, be protected from local efforts to regulate amici. Amici currently provide towing services in excess of seventy-five jurisdictions. Amici fear that it will become impractical if not impossible to comply with the myriad of regulations proposed and enacted by local governmental entities.

Amici ask this Court to protect the free market for motor carriers envisioned by Congress and affirm the court of appeals holding that 49 U.S.C. § 14501(c)(2)(A) does not authorize local regulation of motor carriers of property.

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SUMMARY OF THE ARGUMENT

The Sixth Circuit was correct, along with the Fifth, Eleventh, and Ninth Circuits, in determining that 49 U.S.C.A. § 14501(c)(1) preempts local regulation related to the price, route, or service of motor carriers of property. The court of appeals was also correct in holding that Congress' express reservation of authority to States to regulate motor vehicle safety does not encompass the authority of States to delegate this authority to political subdivisions.

The plain language of the statute expressly declares Congress' intent to deregulate motor carriers of property to the same extent to which it deregulated air carriers and motor carriers affiliated with air carriers. Every court that has considered this question has held that § 14501(c)(1) preempts state and local regulations that have more than a tenuous or remote effect on motor carriers' prices, routes, and services. In addition, the legislative history of § 14501 confirms this intent. The court of appeals construction furthers Congress express deregulatory purpose. Petitioners' reliance on the presumption against federal preemption of traditional state police powers is misplaced because the language and purpose of the general preemption clause was intended to displace the very "traditional police powers" Petitioners argue are saved from preemption.

Congress reserved authority of States to continue to regulate motor vehicle safety among other things. Contrary to Petitioners' implication, however, courts have held on numerous occasions that a specific grant or reservation of authority to States by Congress did not necessarily preserve the authority of States to delegate their authority to political subdivisions. Petitioners' vision of Congress' intent would permit cities and counties to regulate all motor carriers of property to the same extent Petitioners seek to regulate Respondents. Further, the alleged "safety" exception, under which Petitioners seek to regulate, is actually a more limited exception for safety regulation *with respect to motor vehicles*. It is not, al-

though often mischaracterized as such, an exception for "public safety" or "motor carrier safety." Petitioners' construction of § 14501(c)(2)(A) would allow the exception to swallow the rule and lead to the absurd and irrational result that Congress has deregulated the motor carrier industry by authorizing thousands of separate jurisdictions to regulate transport companies.

Petitioners' and amicus United States' reliance on the Secretary of Transportation's role is also misplaced. Even with local regulation preempted, the Secretary still maintains a vital role in ensuring that non-preempted laws of general application, touching safety or other areas, do not impose an unreasonable burden on intrastate motor carriers or impede the transportation policy of the United States. The Secretary is also charged with administering and monitoring other provisions of the ICCTA, including the preemption provisions at §§ 14501(a) and 14501(b).

This Court's decision in *Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597 (1991) does not mandate reversal of the court of appeals' holding. Mortier does not establish a general rule of statutory construction that reservation of regulatory authority to States must always include authority to delegate to political subdivisions even in the face of contrary congressional intent.

Finally, Petitioners' contention that Respondents' construction would prohibit local enforcement of all traffic regulations is incorrect. Traffic laws of general applicability that only remotely or tenuously affect prices, routes, or services are not preempted by § 14501(c)(1) in the first place. Thus, Petitioners' contention as to the enforcement scope of § 14501(c)(2)(A) is irrelevant. Likewise, Petitioners' arguments concerning "wreck chasing" are not sufficient to overcome Congress' express directive. Enforcement of State laws empowering peace officers to control accident scenes, compel obedience to lawful directives of a peace officer, order the removal of vehicles that are hindering or blocking traffic, or general traffic laws provide a few examples of State regulations that would be saved from preemption by § 14501(c)(2)(A)

in the event a court found these generally applicable traffic laws preempted by § 14501(c)(1) in the first instance. Also, numerous courts have recognized the market-participant exception to general preemption which allows cities to contract with one or more companies and set reasonable standards for performing police ordered tows from accident scenes. If cities choose not to participate in the market, States remain free to enact and enforce laws that are not generally preempted by § 14501(c)(1) or pursuant to its authority to regulate under § 14501(c)(2)(A).

I. TOWING INDUSTRY

Before addressing the specific question as to the scope of § 14501(c)'s preemption and its exceptions, amici will provide a brief description of the current towing industry and its place in the vast market of motor carriers of property. Towing companies are motor carriers of property under Congress' definition. 49 U.S.C. § 13102(12). Since the adoption of the limited exception allowing States and political subdivisions to set the maximum price for nonconsensual tows effective January 1, 1996, every court that has addressed the question has held that motor carriers providing removal, transport, and storage services for motor vehicles were motor carriers of property for purposes of § 14501(c). In addition, neither the express preemption clause at § 14501(c)(1), nor the § 14501(c)(2)(A) exception at issue here, distinguish between towing companies providing transportation and storage of motor vehicles from any other motor carrier of property.

The motor vehicle towing industry typically defines and divides towing into two categories, namely, private property towing and accident towing. Within those two categories, the removal and storage of motor vehicles is classified either as a consent tow or a nonconsent tow, depending on who requests the services of the towing company. *See* Jonathan E. Bruce, *Towing Law and You;*

Towing and Storage Fees, Towing and Recovery Phootnotes, November 2001 at 38.

Consent tows occur when the owner of a vehicle expressly or implicitly requests towing services to be provided by a specific towing company and enters into a private contract with the towing company for the services. *R. Mayer of Atlanta, Inc. v. City of Atlanta*, 158 F.3d 538, 541 (11th Cir. 1998), *cert. denied*, 526 U.S. 1038 (1999). In consent towing situations, the relationship between the vehicle owner and the towing services is contractual. Like other transactions between a consumer and a motor carrier of property, the vehicle owner and the tow truck operator may negotiate the terms and price for the service, and enter into a contract for the removal and storage of the vehicle. A consensual tow can initiate from a variety of locations including private property or public streets and roadways, including the scene of a motor vehicle accident.

Nonconsent tows, on the other hand, are performed without the consent of the vehicle owner or operator.[2] Due to the absence of the vehicle owner or operator to either employ a towing service or the unwillingness of the vehicle owner or operator to have the vehicle towed, a third party, often a private property owner or law enforcement agent, employs the towing company to remove and store the vehicle. *Cardinal Towing & Auto Repair v. City of Bedford*, 180 F.3d 686, 694 (5th Cir. 1999). In the nonconsent towing scenario the third party who requests the tow is considered the consumer of the towing service despite the fact that the vehicle owner or operator is the party responsible for paying the towing and storage

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[2] While not expressly defining nonconsent, 49 U.S.C. § 14501(c)(2)(C), does provide a contextual definition for the term:

> C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

charges. *Id.* at 697. A nonconsent tow, like a consent tow, can initiate from private property, public streets, or the scene of a motor vehicle accident.

Private property consent towing is the towing of a vehicle from private property at the request of or with express or implied consent of the vehicle owner or the person in charge of the vehicle. This type of towing typically takes place when a vehicle is disabled on private property, resulting in the vehicle owner employing a tow truck company to tow their vehicles to a location of their choosing. Private property nonconsent towing usually consists of the towing of trespassers, unauthorized vehicles, or illegally parked vehicles at the request of the property owner without the consent of the vehicle owner. This type of towing typically takes place from commercial parking facilities, *e.g.*, shopping centers, restaurants, apartment complexes, *etc.* Commercial property owners with limited available parking for their customers employ towing companies to remove unauthorized vehicles from their property in an attempt to keep fire lanes, entrances, and assigned and handicap parking spaces clear,

Police-ordered tows or accident towing typically involves situations in which the vehicle is in need of towing due to an accident or mechanical failure on a public roadway. As stated above, the resulting tow can be either consensual or nonconsensual. Typically, there are two different towing scenarios that occur at the scene of a motor vehicle accident. Consent tows from accident scenes occur provided the vehicle driver is not seriously injured, remains at the scene, and is able to employ a towing service. Nonconsensual tows from accident scenes typically result when the vehicle driver, due to injury or other reasons, leaves the scene or is unable to select a towing service, thus leaving law enforcement to select and employ a towing service.

The only court to specifically address and define the terms consent and nonconsent towing as applied to towing from the scene of a motor vehicle accident has been the Fifth Circuit in *Cardinal Towing & Auto Repair, Inc. v.*

City of Bedford, Texas, 180 F.3d 686 (5th Cir. 1999), and *Stucky v. City of San Antonio*, 260 F.3d 424 (5th Cir. 2001), *reh'g denied*, 266 F.3d 342, *pet. for cert. filed*, 70 U.S.L.W. 3465 (U.S. December 13, 2001)(No. 01-1028). In *Cardinal* the court defined nonconsent towing and why, under the "market-participant" doctrine, police-ordered nonconsensual tows from the scene of a motor vehicle accident escaped preemption by 49 U.S.C. § 14501(c)(1).[3] The Fifth Circuit in *Cardinal*, stated that a true non-consent tow occurs when "the owner of the vehicle is unwilling or unable to specify a towing company." *Cardinal*, 180 F.3d. at 694. Nonconsensual towing does not involve any opportunity for market interaction on the part of the owner of the vehicle and the towing company. *Cardinal*, 180 F.3d at 696.[4] Often in an accident situation, a law enforcement officer is confronted with a vehicle in need of towing and no vehicle owner to make arrangements to have the vehicle towed.[5] In these instances the city, as opposed to the vehicle owner, becomes the party entering the market for the procurement of towing services.

In *Stucky* the court of appeals clarified the distinction between consent and nonconsent towing from the scene of a motor vehicle accident. The Fifth Circuit concluded that when the market actor (vehicle operator) is present and wishes to employ a towing company of his own choosing, the removal of the vehicle is consensual.

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[3] Following the decision in *Cardinal*, the Courts of Appeals for the Sixth and Ninth Circuits have both held that city nonconsensual towing ordinances as applied to police-ordered tows from accident scenes are exempt from preemption based on a municipal-proprietor/market-participant analysis. *See Petrey v. City of Toledo*, 246 F.3d 548, 559 (6th Cir. 2001); *Tocher v. City of Santa Ana*, 219 F.3d 1040, 1049 (9th Cir. 2000), *cert. denied*, 531 U.S. 1146 (2001).

[4] This fact no doubt contributed to Congress' decision to add an exception allowing States *and political subdivisons* to set the maximum price for nonconsensual tows. *See infra*, note 12.

[5] The towing of abandoned vehicles, prisoner vehicles, illegally parked vehicles, and vehicles impounded by the police would also fall under the category of nonconsensual towing.

Stucky, 260 F.3d at 436. Although the vehicle owner may be required by law to remove their inoperative vehicle from the public roadway, if the vehicle owner is present and able to select a towing service, the vehicle owner or operator remains the market participant. Thus, regulation by the city could not be saved from preemption under the "market participant" doctrine. *Stucky*, 260 F.3d at 438-39.[6] Upon this backdrop, amici address the scope of preemption and the exceptions to preemption in 49 U.S.C. § 14501(c)(1).

II. SCOPE OF PREEMPTION

A. The Plain Language Declares Congress' Intent

Congress enacted the Federal Aviation Administration Authorization Act ("FAAAA") effective January 1, 1995 in an effort to, among other things, deregulate the motor carrier industry. 49 U.S.C. § 11501(h) (recodified as amended at 49 U.S.C. § 14501(c)). Congress enacted the Interstate Commerce Commission Termination Act ("ICCTA") effective January 1, 1996, which amended the FAAAA. 49 U.S.C. § 14501(c)(1).

The Court's analysis begins with the plain language of the statute. *Estate of Cowart v. Niklos Drilling Co.*, 505 U.S. 469, 475 (1992). The ICCTA provides in pertinent part:

> c) Motor carriers of property.--
> (1) General rule.--Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more states may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor

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[6] The Fifth Circuit also noted that the City could not transform consent tows into nonconsent tows simply by defining all accident tows as nonconsent tows despite the vehicle owner's willingness or ability to select a towing company. *Stucky*, 260 F.3d at 434-35 & n.11; *Stucky*, 266 F.3d at 343 (opinion on rehearing).

> carrier ... or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(1). Although this Court has not had occasion to construe the ICCTA, the Court is not without guidance. Congress has used the phrase "related to" in two other statutes intended to preempt state laws and regulations. Employee Retirement Income Security Act ("ERISA") 29 U.S.C. § 1144(a); Airline Deregulation Act ("ADA") 49 U.S.C. § 41713(b)(1) & (b)(4).

In construing the phrase "related to" for the first time in ERISA, this Court recognized the phrase was "deliberately expansive" and "conspicuous for its breadth." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47 (1987). Congress used identical language in the ADA. 49 U.S.C. § 41713(b)(4). This Court has construed the preemptive language of the ADA on two previous occasions. *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992). In *Morales*, this Court held that the phrase "related to" expressed a "broad preemptive purpose." *Morales*, 504 U.S. at 383. The Court gave the phrase "related to" its ordinary and common meaning, finding Congress intended to preempt laws or regulations that have a connection with or reference to airline prices, routes, or services. *Id.*

Likewise, in *Wolens*, this Court confirmed Congress' broad purpose when it held that Illinois' Consumer Fraud Act could not be enforced against airlines to the extent that the action related to the airlines' prices, routes, or services. *Wolens*, 513 U.S. at 226-28. Thus, this Court has been consistent that the phrase "related to" indicates Congress' intent to preempt enactment or enforcement of laws or regulations that have a connection with or reference to the prices, routes, or services of the affected industry.

The ICCTA, like the ADA, preempts state and local laws or regulations that "relate to" the prices, routes, or services of motor carriers of property. 49 U.S.C. §

14501(c)(1). It is undisputed that the regulations enacted by Petitioners "relate to" the price, route, or service of Respondents. Nevertheless, the Court has stated that specific provisions of a statute should be interpreted within the context of the entire statutory scheme. *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991). The language employed by Congress evinces a clear intent to preempt all state and local regulations related to the prices, routes, or services of motor carriers of property save for express exceptions discussed below.[7]

Despite express language to the contrary, the Second Circuit focused on ICCTA's preemption of *economic* regulations. *Ace Auto Body & Towing, Ltd. v. City of New York*, 171 F.3d 765, 776 (2d. Cir.), *cert. denied*, 528 U.S. 568 (1999). Had Congress intended to preempt only state and local *economic* regulations pursuant to § 14501(c)(1), § 14501(c)(2)(A) would have been unnecessary. Section 14501(c)(1) makes no distinction between state and local safety regulations and state and local economic regulations. At some level, all safety regulations relate to and indirectly affect prices; thus are also economic in nature. *Stucky*, 260 F.3d at 445-46.

As will be discussed *infra* at II.A., the so called "safety" exception is in fact a more limited exception for the "safety regulatory authority of a State *with respect to motor vehicles*." 49 U.S.C. § 14501(c)(2)(A) (emphasis added). Prior to enactment of the FAAAA, state and local governments regulated motor carriers for, among other

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[7] Every circuit court of appeals that has construed 49 U.S.C. § 14501(c)(1) has held that local regulation of towing services is preempted by § 14501(c)(1). Upon determining the regulations were preempted, each court proceeded to examine the regulations in light of the exceptions, specifically § 14501(c)(2)(A). *Stucky v. City of San Antonio*, 260 F.3d 424 (2001),*reh'g denied*, 266 F.3d 342 (5th Cir. 2001), *pet. for cert. filed*, 70 U.S.L.W. 3465 (U.S. December 13, 2001)(No. 01-1028); *Petrey*, 246 F.3d at 559; *Tocher*, 219 F.3d at 1049; *Ace Auto Body & Towing, Ltd. v. City of New York*, 171 F.3d 765 (2d. Cir.), *cert. denied*, 528 U.S. 568 (1999); *R. Mayer of Atlanta, Inc. v. City of Atlanta*, 158 F.3d 538 (11th Cir. 1998), *cert. denied*, 526 U.S. 1038 (1999).

things, consumer protection, public convenience or necessity, public safety, or motor vehicle safety pursuant to their general police powers. It was necessary for Congress to include an express exception reserving the authority of States proper to continue to regulate motor vehicle safety in light of § 14501(c)(1)'s general preemption provision. Had Congress intended to preempt only economic regulation of motor carriers, Congress could have used language other than language identical to the ADA.

This point is bolstered by the fact that, in addition to motor vehicle safety, Congress excepted the authority of a State to impose highway route controls, limitations on the size and weight of vehicles, or the hazardous nature of the cargo, along with State requirements regarding minimum insurance requirements and financial responsibility. 49 U.S.C. § 14501(c)(2)(A). These provisions exclude both safety (hazardous cargo) and economic (insurance) regulations. The inclusion of these limited exceptions touching safety and economic concerns indicates that Congress intended § 14501(c)(1) to preempt all laws related to price, route, or service whether driven by safety or economic concerns. It is clear from the plain language of the statute that § 14501(c)(1), on its face, preempts all State and local laws or regulations related to prices, routes or services of motor carriers of property subject to the narrow exceptions to be discussed below.

B. The Legislative History Confirms Congress' Intent

It is undisputed that by enacting § 14501(c)(1), Congress intended to deregulate motor carriers of property subject to narrow exceptions. *See Petrey*, 246 F.3d at 563 (purpose of statute to encourage market forces by elimination of a myriad of complicated and conflicting regulations); *Tocher*, 219 F.3d at 1048 (purpose of statute to deregulate motor carrier industry because disparate regulation is inefficient and reduced competition and innovation); *Cardinal*, 180 F.3d at 695 (purpose of statute is elimination of state and local regulation that

reduces competition and curtails expansion of markets); *Ace*, 171 F.3d at 772 (purpose of statute was to free motor carrier industry from state and local regulation); *Mayer*, 158 F.3d at 544 (purpose of statute is to foster increased competition in the motor transportation industry by eliminating a tangled web of state and local regulations).

In addition to employing the same plain language, the legislative history confirms Congress' intention that the scope of preemption pursuant to 49 U.S.C. § 14501(c)(1) be identical to that of 49 U.S.C. § 41713(b)(4)(A), the general preemption provision contained in the ADA. The House Conference Report on the FAAAA states that the preemption provision of 14501(c)(1) "is identical to the preemption provision deregulating air carriers . . . and is intended to function in the exact same manner with respect to its preemptive effects." H.R. Conf. Rep. No. 103-677, 103rd Cong., 2d Sess. 85 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1757. The conference report also states that the "conferees do not intend to alter the broad interpretation adopted by the United States Supreme Court in *Morales v. Trans World Airlines*." *Id.* at 83, *reprinted in* 1994 U.S.C.C.A.N. 1715, 1755. Courts have repeatedly resorted to interpretation of the ADA's preemption clause in construing the general preemption provision contained in the ICCTA. *See, e.g., Ace*, 171 F.3d at 773; *Mayer*, 158 F.3d at 545 n.5; *Deerskin Trading Post, Inc. v. United Parcel Serv. of Amer., Inc.*, 972 F.Supp. 665, 668-72 (N.D. Ga. 1997); *Harris Co. Wrecker Owners for Equal Oppor. v. City of Houston*, 943 F.Supp. 711, 725 (S.D. Tex. 1996).

Amicus United States in support of Petitioner, like the Second Circuit in *Ace*, argues that the legislative history indicates that Congress only intended to preempt *economic* regulation as opposed to *safety* regulation. Brief of Amicus Curiae United States at 23; *Ace*, 171 F.3d at 774. This contention fails because Congress did not make this distinction in the plain language of § 14501(c). In addition, the fact that Congress added an exception for State motor vehicle safety regulation,

among other things, confirms that Congress was well aware that the breadth of § 14501(c)(1)'s "related to" preemption language, as construed by this Court in the past, could preempt safety regulations.

Despite the narrow split between the Second Circuit and the Fifth, Sixth, Ninth and Eleventh Circuits regarding the scope of § 14501(c)(2)(A), there seems to be general agreement among State and federal courts that the scope and purpose of 49 U.S.C. § 14501(c)(1) was to deregulate the motor carrier industry subject to narrow exceptions to be discussed below.

C. Congressional Intent Overcomes Presumption Against Preemption of Traditional Police Powers

Petitioners rely heavily on the presumption against federal preemption of state laws and traditional state police powers. This reliance is misplaced for several reasons. The court of appeals in *Ace* based its starting presumption on its treatment of ERISA preemption. *Ace*, 171 F.3d at 773. This presumption is overcome when, as in § 14501(c)(1), Congress undoubtedly intended to supplant all state and local laws. Cases involving Congress' intention to preempt state law, especially in field preemption cases, lend themselves to the starting presumption that Congress did not intend to supplant state law because in field (or implied) preemption cases, courts are required to determine *whether* Congress intended to preempt as opposed to the *extent* of preemption. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 533 (1992) (opinion of Blackmun, J.).

On the other hand, however, it is not appropriate to apply this presumption in *express preemption* cases where Congress was clear and unambiguous as to the scope and purpose of preemption. It would be an odd exercise indeed to measure § 14501(c)(1) against a presumption that Congress did not intend to supplant state and local laws. To do so would require a court to begin its analysis by presuming Congress did not intend to

preempt state law despite Congress' express directive to the contrary. Presumably, that is why this Court, in analyzing the *identical preemptive language* from the ADA, did not apply (or even mention) this presumption in *Morales* or subsequently in *Wolens*. For this reason, it is inappropriate when construing § 14501(c)(1) to begin with the presumption that Congress did not intend to supplant state and local laws.

This Court did, however, make clear in *Cipollone* that "the historic police powers of the States [are] not to be superseded unless that [is] the clear and manifest purpose of Congress." *Cipollone*, 505 U.S. at 516 (*quoting Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). As noted above, this presumption boils down to simply that courts will not assume Congress intended to preempt state laws unless Congress expressly does so, or impliedly does so by occupying the field with its own regulation, or states pass laws that conflict with federal law. There is no dispute in this case that Congress' manifest purpose was to supersede state and local laws. Therefore, the presumption that State laws will not be superseded unless Congress clearly says so is overcome by the fact that Congress, in plain language, said so.

The Second Circuit in *Ace* also made a distinction that regulations imposing only "incidental economic burdens" were not preempted. *Ace*, 171 F.3d at 774. The *Ace* court, however, failed to explain how this finding shielded the regulations from express preemption. The "incidental burden" analysis seems akin to this Court's statement in *Morales* that "some state actions may affect [airline fares] in too tenuous, remote or peripheral a manner to have pre-emptive effect." *Morales*, 504 U.S. at 390 (internal quotations omitted). This Court's statement in *Morales* clearly contemplates a law or state action that would escape the general preemption clause in the first instance. *Id.* (stating with respect to "obscene depictions that "the connection would obviously be far more tenuous."). This point is made crystal clear by this Court's treatment of the Illinois Supreme Court's decision in *Wolens v. American Airlines, Inc.*, 626 N.E.2d 205,

208 (Ill. 1993), holding that frequent flyer programs were not "essential to but merely peripheral to the operation of an airline." *Wolens*, 513 U.S. at 226 ("*Morales*, we are satisfied, does not countenance the Illinois Supreme Court's separation of matters essential from matters unessential to airline operations.") (internal quotations omitted).

In construing § 14501, the court of appeals in *Ace* erred when it balanced the "competing interests" of the presumption against preemption of historic state police powers and the "incidental economic burden" of otherwise preempted regulations. *Ace*, 171 F.3d at 774. Courts are not free to balance competing interests in the face of a clear and unambiguous directive from Congress. Otherwise, Congress' directive would have little force. Congress has weighed the competing interests involved and has decided in favor of deregulating motor carriers of property by expressly preempting state and local regulations in spite of any presumptions to the contrary.

In conducting its balancing act, the court of appeals in *Ace* incorrectly applied this Court's statement in *Morales* as an exception to the express preemption clause. This Court's statement in *Morales* regarding a state law or action that may be too tenuous or remote to be preempted assists courts in determining Congress' intent as to the scope of *whether* a law "relates to" the preempted field. *Californians for Safe and Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1189 (9th Cir. 1998). It does not establish an exception to express preemption. *See id.*; *see also State v. Foley*, 950 S.W.2d 781, 786 (Tex.App.–Austin 1997, no writ) ("Saying state action is too remote, tenuous, or peripheral to fall within a deregulation statute is just another way of saying the legislature did not intend to prohibit the state action of which the plaintiff complains."). In other words, if Congress intended to preempt the subject regulations, the burden imposed on the targeted industry by the regulations is irrelevant. Because it is undisputed that the regulations enacted by Petitioner "relate to" the

prices, routes, or services of motor carriers and are not "too tenuous or remote" to be preempted, the court of appeals' opinion should be affirmed unless Petitioners demonstrate the challenged regulations fall into one of the exceptions contained in statute.

III. SCOPE OF EXCEPTIONS

The statute in question contains exceptions to its express preemption clause. First, it provides an exception for states to enact safety regulations with respect to motor vehicles, financial responsibility and insurance requirements, and highway route restrictions based upon the size or weight of the vehicle, or the hazardous nature of the cargo. 49 U.S.C. § 14501(c)(2)(A). It also provides an exception for transportation of household goods. 49 U.S.C. § 14501(c)(2)(B). Finally, it provides an exception allowing states *and* political subdivisions of states to regulate the price of transportation by motor carrier if such transportation is provided without the prior consent of the owner. 49 U.S.C. § 14501(c)(2)(C).

A. Plain Language of § 14501(c)(2)(A)

The Sixth Circuit, following the opinion of a previous panel, along with the Fifth, Ninth, and Eleventh Circuits, have all held that § 14501(c)(2)(A) does not allow, among other things, local regulation of motor carriers. The specific exception at issue in this case provides:

> (2) Matters not covered.--Paragraph (1)
> (A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of

> financial responsibility relating to insurance requirements and self-insurance authorization.

49 U.S.C. § 14501(c)(2)(A).

As noted above, courts begin by looking at the plain language of a statute giving terms their ordinary meaning. If Congress' intent is clear from the language of the statute, the court need look no further. The judicial inquiry is complete. *Cowart*, 505 U.S. at 475. Petitioner City of Columbus is not a State. "State" is defined for purposes of the ICCTA as "the fifty States of the United States and the District of Columbia."). 49 U.S.C. § 13102(18). By its plain language, applying the definition supplied by Congress, the exception does not appear to preserve the regulatory authority of political subdivisions. Therefore, the regulations enacted by Petitioners appear to be preempted. Further inquiry by this Court, if necessary, will provide confirmation that Congress did not intend to allow continued regulation of motor carriers by political subdivisions when it deregulated the motor carrier industry.

First, as noted above, Congress defined *State* for purposes of the ICCTA. 49 U.S.C. § 13102(18). Congress is well aware of the importance of defining key terms to be included in statutes. For example, Congress included a definition of *State* in the ADA that did *not* encompass political subdivisions. 49 U.S.C. § 41713(a). Further, as pointed out by the United States in support of Petitioners, Congress defined *State* to include political subdivision in other sections of the statute where Congress intended to depart from the definition of *State* to be generally applied throughout the ICCTA. See Brief of Amicus Curiae United States at 27.

Second, Congress intentionally omitted reference to political subdivisions of States in § 14501(c)(2)(A). *See generally BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994) ("It is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another.") (internal quotation marks omitted). Congress included seven express references to the regulatory authority of political subdivisions. 49 U.S.C. § 14501(a), 14501(b), 14501(c)(1), 14501(c)(2)(C), 14501(c)(3)(A), 14501(c)(3)(B), and 14501(c)(3)(C). Section 14501(c)(2)(A) is the only subsection of the statute where Congress directly authorized *State* regulatory authority without also invoking the authority of the States' *political subdivisions*.

The Eleventh Circuit addressed this omission:

> We find it unlikely that this omission reflects a drafting error because a similar preemption provision contained in the Airline Deregulation Act, 49 U.S.C. § 41713(b)(4)(B)(I), contains the same omission. For these reasons, we view Congress' omission of a reference to political subdivisions from § 14501(c)(2)(A) as a manifestation of Congress' intent that municipal safety and insurance regulations are not exempted from the preemptive scope of § 14501(c)(1).

Mayer, 158 F.3d at 545 (internal quotation marks omitted).

Section 14501(c)(3)(A) also supports the contention that Congress intentionally omitted political subdivisions from 14501(c)(2)(A). Section 14501(c)(3)(A) provides:

> Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or political authority of 2 or more States to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to–
>
> (i) uniform cargo liability rules,
>
> (ii) uniform bills of lading or receipts for property being transported,
>
> (iii) uniform cargo credit rules,
>
> (iv) antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling, or
>
> (v) antitrust immunity for agent-van line operations (as set forth in section 13907),

if such law regulation, or provision meets the requirements of subparagraph (B).

While §14501(c)(2)(A) does not "restrict the safety regulatory authority of a State," § 14501(c)(3)(A) does not "affect any authority of a State." This distinction is crucial because Petitioners argue that the "safety regulatory authority of a State" is commonly understood as encompassing a State's power to delegate authority to its political subdivisions. Regardless of the breadth of States' "safety regulatory authority," it cannot be said to be broader than "any authority of a State." Thus, had Congress understood "safety authority" to include political subdivisions, surely it would have intended "any authority" to also include political subdivisions. Nevertheless, Congress felt it necessary to include *political subdivisions* when it declared that the general preemption clause shall not affect *any* authority of a *State*. 49 U.S.C. § 14501(c)(3)(A).

Third, despite Petitioners' implication to the contrary, this is not the first time a court has construed the term "State" with relation to regulatory authority and held that it did not include the authority of political subdivisions or the authority of States to delegate authority to their political subdivisions. The United States Courts of Appeal for the Fifth and Sixth Circuits, and other state and federal courts, have faced this issue with regard to similar deregulatory statutes and held that reservation of authority to *States* does not necessarily encompass delegation of that authority to their political subdivisions. *See, e.g., CSX Transp., Inc. v. City of Plymouth*, 86 F.3d 626 (6th Cir. 1996) (holding safety exception granted exclusively to "States" in the Federal Railway Safety Act ("FRSA") did not apply to municipalities); *Ohio Mfrs. Ass'n v. City of Akron*, 801 F.2d 824, 829 (6th Cir. 1986) (holding omission of political subdivisions in preemption provision of Occupational Safety and Health Act ("OSHA") was intentional); *Donelon v. New Orleans Terminal Co.*, 474 F.2d 1108 (5th Cir.), *cert. denied*, 414 U.S. 855 (1973) (holding same with regard to FRSA); *Grand Trunk W. R.R. v. City of Fenton*, 439 N.W.2d 706 (Mich. 1992), *cert. denied*, 507 U.S. 1050 (1993) (holding FRSA safety exceptions apply to State only and not to local governments).

In *Donelon*, local officials claimed authority to act under a statutory exception allowing *State* safety regulations in the Federal Railway Safety Act[8] ("FRSA"). *Donelon*, 474 F.2d at 1112-113. The Fifth Circuit did not analyze the regulations because, as a threshold matter, the court held that the parish officials of the local government were not a "State" for purposes of the FRSA and therefore did not fit within the exception. *See id.* at 1113 (citing *United Gas Pipeline Co. v. Terrebonne Parish Police Jury*, 445 F.2d 301 (5th Cir. 1971)). The *Donelon* holding was later followed by the Sixth Circuit in *CSX Transp., Inc. v. City of Plymouth*, 86 F.3d 626 (6th Cir. 1996).

In *CSX*, using the same logical approach as *Donelon*, the court of appeals held that the FRSA reserved a specific exception to "States" to regulate railway safety. *See id.* at 628. The court was clear that because the City of Plymouth was not a *State* as defined by the statute, its ordinance was preempted even though it was targeted specifically at safety. *See id.* The court of appeals in *CSX* came to this conclusion despite the fact that the City of Plymouth was acting under an express delegation of authority from the State. *CSX*, 86 F.3d at 628 (citing *CSX Transp., Inc. v. City of Thorsby*, 741 F.Supp. 889, 891 (M.D. Ala. 1990) ("It is a city ordinance and not a state law or regulation which is at issue. The fact that the city may have acted on delegated [State] authority does not detract from . . . this dispositive fact."). As the United States pointed out in support of Petitioners', cities "are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion." Brief of Amicus Curiae United States at 11 (quoting *Wisconsin*

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[8] Pub. L. No. 91-458, Title II, 84 Stat. 1705 (Oct. 24, 1978), codified as amended at 49 U.S.C. § 20101 *et. seq.*

Pub. Intervenor v. Mortier, 501 U.S. 597, 607-08 (1991)).[9] This fact bolsters the point made by the Ninth Circuit in *Tocher* that to adopt Petitioners' construction would "lead to the absurd result that Congress can never preempt local regulations and simultaneously leave a state's ability to regulate intact." *Tocher*, 219 F.3d at 1051.[10]

Further, to adopt Petitioners' construction, it would be unnecessary to ever define "State" as including political subdivisions. In the ICCTA, Congress found it necessary, however, to define "State" without including political subdivisions. Petitioners' construction would require this Court to disregard two well-recognized canons of statutory construction requiring courts to (1) give similar language in the same statutory section consistent meaning and (2) all words in a statute should be given effect. *See National Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 502 (1998); *United States v. Nordic Village, Inc.*, 503 U.S. 30, 36 (1992).

Petitioners' construction becomes more untenable given that, as pointed out by amicus United States, Congress altered the definition of "State" to *include* political subdivisions within the same statute. Brief of Amicus Curiae United States at 18. This confirms that Congress was well aware that the definition of "State" at § 13102(18) excluded political subdivisions. Otherwise, it would have been unnecessary for Congress to expressly alter the definition of "State" for purposes of specific statutory sections. *See, e.g.*, 49 U.S.C. § 31132(7)-(9). As noted by the United States with respect to § 31141,

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[9] It is instructive that neither Petitioner nor amici in support of Petitioner allege that specific authorization by state statute or state constitution in any way requires a different analysis or compels a different result than if the local government regulated pursuant to its general self-governing authority.

[10] There are certainly occasions, like that in § 14501(c)(2)(A), on which Congress may wish to preempt regulation by political subdivisions while leaving the States' regulatory authority intact. *See generally, Mortier*, 501 U.S. at 616 (opinion of Scalia, J.) (recognizing that in certain circumstances it could make "eminent sense" to authorize regulation by States but not political subdivisions).

Congress' express language "should not be deemed superfluous absent very clear evidence that such was Congress' intent." Brief of Amicus Curiae United States at 19-20.

Finally, Petitioner's construction also ignores the phrase "with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). Petitioner and their amici contend that Petitioner's regulations are saved from preemption by the so-called "safety exception." Despite the fact that political subdivisions lack authority to regulate pursuant to § 14501(c)(2)(A), Petitioner's contentions demonstrate a further misreading of the exception. First, the exception is more limited than an exception for "public safety." Section 14501(c)(2)(A) clearly allows continued State regulation of *motor vehicle* safety. "Motor vehicle safety" is defined as

> the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

49 U.S.C. § 30102(a)(8). Thus, Congress narrowed the safety exception with the qualifying phrase "with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A).

The Dallas court of appeals addressed this language:

> Preliminarily, we note that the 'safety exception' is, in part, a misnomer. Rather than being a general exception for safety-related regulation concerning motor carriers, the exception is more narrowly drawn than commonly recognized. . . . Therefore, the preemption provision applies to 'motor carriers,' while the safety exception applies only to 'motor vehicles.' Congress is presumed to choose its words carefully and to mean what it says. We must assume Congress did not mean to exempt all safety regulation pertaining to motor

carriers when it used the more narrow qualifying words, 'motor vehicles.'

Whitten v. Vehicle Removal Corp., 56 S.W.3d 293, 305 (Tex.App.–Dallas 2001, pet. granted).

This is made more clear by the fact that in the same exception Congress reserved authority of States to enact regulations with respect to highway routing of hazardous cargo. Certainly, had Congress intended § 14501(c)(2)(A) to be an all-encompassing general welfare exception, it would have been unnecessary to include reference to hazardous cargo or size and weight restrictions as well. *See Whitten*, 56 S.W.3d at 306 ("If the safety exception in the first clause is read so broadly as to include any regulation touching on safety, it would appear the second clause would clearly be encompassed in the first and, therefore, unnecessary."). Notwithstanding political subdivision's lack of regulatory authority, Petitioners' construction of § 14501(c)(2)(A) ignores the text and attempts to squeeze the square peg of permits, application fees, and record requirements into the round hole of motor vehicle safety.

B. Role of Secretary of Transportation in Statutory Scheme

Amici United States contends that the inclusion of local safety regulation among the provisions the Secretary of Transportation is empowered to review under other regulatory statutes, supports the construction that Congress did not intend to preempt local safety regulation of motor carriers. Brief of Amicus Curiae United States at 20-21. The United States' contention is incorrect for three reasons. First, it ignores the role the Secretary would play in reviewing the many state and local regulations that are not preempted by § 14501(c)(1). While the phrase "related to" is admittedly broad, it does not encompass every state or local law that may affect motor carriers of property. Thus, the Secretary would perform an important function in determining whether regula-

on motor carriers or conflict with the transportation policy of the United States pursuant to 49 U.S.C. § 13101.

Second, it ignores the Secretary's function in reviewing regulations that are not preempted regarding *other* types of motor carriers, including motor carriers of passengers and freight forwarders and brokers. 49 U.S.C § 14501(a) & (b). The Secretary may review laws enacted by a *State* pursuant to § 14501(c)(2)(A) and determine that they impose unreasonable burdens or have "unacceptable economic effects" upon motor carriers of property. The fact that the Secretary retains authority to review local safety laws *affecting* motor carriers does not require a finding that Congress did not intend to preempt local regulations.

Third and finally, it fails to acknowledge the exception to the Secretary's jurisdiction limiting the same review power urged by amici in two specific areas significant to companies involved in the removal and storage of motor vehicles. Section 13506(b) restricts the jurisdiction of the Secretary and Surface Transportation Board from exercising jurisdiction over (1) transportation provided entirely in a municipality and (2) the emergency towing of a wrecked or disabled vehicle. 49 U.S.C. § 13506(b)(1) & (3). Thus, in many instances involving regulation of towing companies, the Secretary lacks specific jurisdiction to perform the very review and coordination tasks Petitioners and amicus United States seek to use as evidence that Congress did not intend to preempt local regulation of motor carriers. See Brief of Amicus Curiae United States at 27.[11]

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[11] Petitioners and amicus United States also rely on a Department of Transportation memorandum authored shortly after the passage what would become § 14501(c)(1). See Brief of Petitioners at 31 & D-3; Brief of Amicus Curiae United States at 25-26. Respondents have addressed the substantive weight that this memorandum should be afforded. Amici would also point out the following: (1) the memorandum was issued prior to the passage of the express exception specific to towing companies at § 14501(c)(2)(C); and, (2) the memorandum speaks of "State actions legitimately grounded in pub-

Therefore, because Congress expressly preempted State and local regulations related to the prices, routes, or services of motor carriers of property, provided a specific definition of "State" for purposes of the ICCTA, and intentionally omitted reference to political subdivisions in § 14501(c)(2)(A), it is clear from the text that Congress did not intend to permit continued local regulation of motor carriers of property.

C. Court of Appeals' Construction Furthers Congress' Deregulatory Purpose

In addition to the text, the Sixth Circuit's holding, along with the construction of § 14501(c)(2)(A) adopted by the Fifth, Ninth and Eleventh Circuits, furthers Congress' express purpose of deregulating the motor carrier industry. With regard to that purpose, Congress stated:

> Sec. 601. PREEMPTION OF INTRASTATE TRANSPORTATION OF PROPERTY. (a) Findings.- Congress finds and declares that- (1) the regulation of intrastate transportation of property by the States has- (A) imposed an unreasonable burden on interstate commerce; (B) impeded the free flow of trade, traffic, and transportation of interstate commerce; and (C) placed an unreasonable cost on the American consumers; and (2) certain aspects of the State regulatory process should be preempted.

Pub. L. No. 103-305, 108 Stat. 1569, 1605 (1994).

Construing § 14501(c)(2)(A) in a way that prohibits local regulation while preserving authority to regulate at the State level decreases the number of jurisdictions

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regulatory authority "with respect to motor vehicles." Further, based upon this memorandum, amicus United States claims that the FAAAA allows States and local governments to continue to regulate "with respect to safety, financial responsibility and other non-economic matters." Brief of Amicus Curiae United States at 25. No party has alleged that insurance and financial responsibility requirements are not "economic regulations" otherwise preempted by § 14501(c)(1).

with which motor carriers must comply allowing motor carriers to adopt more standard business practices. *Mayer*, 158 F.3d at 546. It is clear that Congress was concerned with not only the amount of regulation but the *number of jurisdictions imposing said regulations*. *Petrey*, 246 F.3d at 563 (purpose of statute encouragement of market forces by elimination of a myriad of complicated and conflicting regulations); *Stucky*, 260 F.3d at 444 (legislative purpose [in enacting 14501(c)(1)] was to increase competition by eliminating overlapping and potentially inconsistent local regulations . . ."); *Tocher*, 219 F.3d at 1048 ("Congress recognized that dispersing regulatory authority over motor carriers would require a towing company to adhere to a multitude of different regulatory schemes in every locality where it conducted business . . ."); *Mayer*, 158 F.3d at 546 ("The sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business.").

Further, despite the dubious conclusion reached in *Ace* that Congress only intended to preempt state and local "economic" regulations as opposed to "safety" regulations, Petitioners' construction would allow cities and counties to enact and enforce "economic" regulations in the form of minimum insurance and financial responsibility requirements. This fact undermines Petitioners' contention that § 14501(c)(2)(A) preserves the authority of political subdivisions to regulate motor carriers. *Stucky*, 260 F.3d at 446 ("[T]here is no stopping point for the potential reach of the safety exemption. . . . We do not believe Congress created § 14501(c)(2)(A) to be a loophole through which local governments could avoid the general preemptive reach of § 14501(c)(1).").

Congress' intent with regard to deregulation was further illuminated by its statement accompanying the passage of the price exception for non-consensual tows. The purpose could not be more clear:

> [To] provide a new exemption from the preemption of State regulation of intrastate transportation relating to the *price* of non-consensual tow truck

> services. This is only intended to permit States or political subdivisions thereof to set maximum prices for non-consensual tows, and is *not intended to permit reregulation of any other aspect of tow truck operations.*

H.R. Rep. No. 104-311, at 119-20 (1995), *reprinted in* 1996 U.S.C.C.A.N. 793, 831-32 (emphasis added). Once again, Congress expressly referred to the authority of political subdivisions in addition to the authority of States. Once again, had Congress intended *States* to encompass authority of political subdivisions, the inclusion of the language in the statutory exception at § 14501(c)(2)(C) would be unnecessary.[12]

Finally, logic dictates that Congress did not enact a deregulatory statute with sweeping preemption language and in doing so subject all motor carriers of property to thousands of separate jurisdictions with the authority to require, among other things, different amounts of liability insurance; different qualifications for owners and drivers; and different equipment for trucks. Thus, Petitioners' construction frustrates Congress' express deregulatory purpose, while the Fifth, Sixth, Ninth and Eleventh Circuits' construction furthers Congress' purpose while acknowledging Congress' desire to reserve to States the ability to use its regulatory authority over motor vehicles to address safety concerns.

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[12] It should be noted that the Senate was well aware of the importance of the specific language when it adopted § 14501(c)(2)(C). An amendment was offered by Senator Hutchison that would have allowed States and political subdivisions to regulate prices *and related conditions* of non-consensual tows. H.R. Rep. 104-311 at 120 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793, 832. The amendment was rejected by the conference committee. H.R. Rep. No. 104-311 at 119-20 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793-831-32 ("The Committee had been asked to go farther and permit States and political subdivisions thereof to re-regulate all aspects of non-consensual tow truck services. The Committee provision struck a balance between the need to protect consumers from exorbitant towing fees and the need for a free market in towing services.").

D. *Mortier* Does Not Mandate Contrary Result

Petitioners, amicus United States, and the Second Circuit in *Ace*, rely heavily on this Court's decision in *Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597 (1991) to support its construction that § 14501(c)(2)(A) allows local regulation of motor carriers. *Mortier* is inapposite and does not mandate the result urged by Petitioners.

First, *Mortier* dealt with a statute, the Federal Insecticide, Fungicide, and Rodenticide Act[13] ("FIFRA"), which did not seek to supplant State or local authority by its express terms. *Mortier*, 501 U.S. at 606. This Court made clear that FIFRA did not preempt State law in the area of insecticide regulation by express, field, or conflict preemption. *Id.*

FIFRA specifically called for a partnership between the EPA and State and local governments in monitoring and enforcing FIFRA. *Id.* at 615. The Court explained that FIFRA actually encouraged additional State and local regulation. *Id.* at 607. *See also id.* at 614 ("the statute leaves ample room for States and localities to supplement federal efforts"). Obviously, 7 U.S.C. § 136 *et seq.* is distinguishable from 49 U.S.C. § 14501, which leaves no room for State or local regulation save for the narrow exceptions found at § 14501(c)(2)(A) and (c)(2)(C).

Congress expressly preempted state and local regulation of intrastate property transportation in plain ordinary language. *See* 49 U.S.C. § 14501(c)(1). That was not the case with FIFRA. *Mortier*, 501 U.S. at 606 ("FIFRA nowhere expressly supersedes local regulation of pesticide use."). Thus, FIFRA and § 14501(c)(1) were enacted to serve distinctly different purposes.

FIFRA is also distinguishable from § 14501 in that FIFRA is a public safety regimen that was expanded, *i.e.*, made more restrictive, by amendments in 1972. *Mortier*, 501 U.S. at 601 ("1972 amendments transformed FIFRA . . . into a comprehensive regulatory statute.") (internal

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[13] 7 U.S.C.A. § 136 *et.seq.* (1972).

quotations omitted). FIFRA also included provisions authorizing the EPA director to delegate certain enforcement actions to State and local governmental entities. *Mortier*, 501 U.S. at 601-02, 608. Section 14501, on the other hand, is a deregulatory statute. It strips authority from States and political subdivisions with regard to motor carriers of property completely save for narrowly and carefully crafted exceptions. *See* 49 U.S.C. § 14501(c). No partnership is intended and no room for supplementation is afforded.

In *Mortier*, this Court rejected the construction that States were prohibited from delegating authority to political subdivisions under FIFRA despite Congress' exclusive definition of State because *all other factors* utilized in determining Congress' intent recommended against such a construction. FIFRA lacked the "explicit pre-emptive language" necessary to overcome the presumption against federal preemption of State laws. *Mortier*, 501 U.S. at 605. What FIFRA lacked, § 14501 contains in abundance. In addition to the plain language of the express preemption provision, every interpretive tool at this Court's disposal counsels in favor of finding that Congress intended to prohibit local regulation of motor carriers of property. As a result, the court of appeals was correct, as was the Fifth, Ninth, and Eleventh Circuits, in holding that § 14501(c)(2)(A) does not allow regulation of motor carriers by political subdivisions.

IV. WRECK CHASING

Petitioners and their amici stress the need for local regulation to address the perceived problem of "wreck chasing." See Brief of Petitioners at 5-6; Brief of Amicus Curiae City of Dallas at 1-2. Petitioners complain that if cities are preempted under 49 U.S.C. § 14501(c) from regulating towing companies, they will have no means by which to combat "wreck chasing." This assertion is unfounded. Petitioners, like all cities, have means to combat wreck chasing through enforcement of generally applicable traffic laws. Like all motor carriers and motor

vehicle operators using the public roadways, tow truck operators are subject to general state licensing and traffic laws.

Notably, Petitioner, City of Columbus, does not require the licensing of tow truck operators who only perform tows from the scene of accidents within the city, but requires Columbus' tow truck operators to obtain a license regardless of the type of tow they perform or the location from where the tow takes place. *See* Columbus, Ohio, City Code § 549.02. In addition, amicus City of Dallas has an entire chapter of its city code devoted to regulating nonconsensual tows, despite the fact that it has a separate chapter devoted specifically to regulating tows from accident scenes. *Compare* Dallas City Code Chapter 48A (regulates all towing companies that operate within city limits including setting maximum price for nonconsensual tow) *with* Dallas City Code Chapter 15D (regulates towing from accident scenes within city limits). As previously stated, private property towing initiates through a contractual relationship between the party requesting the tow and the tow company. Because of this relationship, there is no need on the part of Petitioners to regulate private market participants engaging in commerce.

Finally, to the extent "wreck chasing" presents a perceived safety problem, States are free to enact and enforce generally applicable traffic laws that address safety concerns. Drivers who receive too many citations for speeding, for instance, are subject to driver's license suspension or revocation, as well as denial of liability insurance in the free market. In addition, States are free to enact or enforce laws regarding accident scenes such as the requirement to obey the lawful orders of a peace officer, or a prohibition on hindering a peace officer's investigation at an accident scene. In any case, Congress was aware of "wreck chasing" when it passed § 14501(c)(1). Congress reserved to the States adequate authority to address these traffic safety concerns while maintaining its express purpose of deregulating the motor carrier industry and creating a free market for towing